No. 87-168

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

RUSSELL FRISBY, *et al.*,

Appellants,

v.

SANDRA C. SCHULTZ and ROBERT C. BRAUN,

Appellees.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF AMICI CURIAE OF AMERICAN LIFE LEAGUE, INC., CHRISTIAN ADVOCATES SERVING EVANGELISM, AND FREE SPEECH ADVOCATES IN SUPPORT OF APPELLEES

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INTEREST OF AMICI CURIAE[1]

This case presents important issues concerning the freedom of speech for all Americans. The American tradition of free and open discourse in public places, including streets

[1] This brief *Amici Curiae* is filed pursuant to Rule 36 of the Rules of this *(cont'd)*

and sidewalks, has contributed greatly to the success of our democracy. American Life League, Inc., Christian Advocates Serving Evangelism, and Free Speech Advocates are opposed to Appellants' sweeping prohibition of cherished First Amendment freedoms.

American Life League, Inc., is a pro-life organization with a national membership, representing over 500,000 Americans. The League works to develop national policies in the defense of all human life from fertilization to death. The League conducts educational programs and performs research aimed at informing citizens of their God-given right to life and of the need to defend that right and to restore the enjoyment of that right to unborn children.

Christian Advocates Serving Evangelism is a legal defense organization dedicated to protecting, preserving and defending the right to proclaim the Gospel of Jesus Christ in public places.

Free Speech Advocates is a legal defense organization dedicated to protecting, preserving and defending the right of public witness and speech on behalf of the unborn child.

Amici's legal counsel have specialized in litigation in both state and federal courts with regard to various First Amendment issues. Mr. Jay Alan Sekulow serves as Counsel with each *amicus* and has appeared before the Court in *Board of Airport Commissioners of Los Angeles v. Jews For Jesus*, 107 S. Ct. 2568 (1987). Dr. Charles E. Rice is a professor of Constitutional Law at Notre Dame Law School. *Amici* believe that the experience of its counsel will be of assistance to the Court in this case.

Amici are particularly concerned by a disturbing tendency to undermine cherished First Amendment freedoms by wrongly using the right of privacy in matters where abor-

Court on behalf of American Life League, Inc., Christian Advocates Serving Evangelism and Free Speech Advocates. The parties have consented to the filing of this brief; a joint letter consenting to the filing of this brief is on record with this Court.

tion interests are perceived. Even this case has been referred to as one of "a small flurry of cases that represent non-traditional abortion challenges," "High Court Faces Novel Challenges To Abortion," *Nat'l L. J.*, Mar. 21, 1988, at 5, col. 1.

In other case scenarios, the traditional public forum sidewalks in front of abortion facilities are made prohibited zones for free speech. For example, the City of Boulder, Colorado actually adopted the following in response to peaceful picketing on the public right of way in front of a Boulder abortion clinic:

> *Section 1.* A new Section 5-3-10 is enacted to read:
>
> 5-3-10 *Harrassment Near Health Care Facility.*
>
> No person seeking to pass a leaflet or handbill to or display a sign to or engage in conversation, protest, counseling, or other verbal exchange with a second person, within one hundred feet of a health care facility, shall approach closer than eight feet of such person, unless such second person gives express oral consent to do so; and upon request of such second person, no such first person shall fail to withdraw to at least eight feet from such second person or in the alternative, to discontinue all efforts at passing such leaflet or handbill or displaying such sign or engaging in such conversation, protest, counseling, or other verbal exchange. For the purposes of this subsection, distance shall be measured from any extension of the first person's body, including without limitation a sign, to any part of the second person's body.
>
> . . .

Boulder City Ordinance No. 4982 (1986). Incredibly, such an ordinance was found constitutionally sound by the United States District Court for the District of Colorado, *Buchanan v. Jorgensen*, Docket No. 87-Z-213 (D. Colo. 1987). *See also Bering v. SHARE*, 106 Wash. 2d 212, 721 P.2d 918 (1986), *cert. dismissed for want of jurisdiction*, 55 U.S.L.W. 3494 (1987). Such regulations and decisions demonstrate that the "Court's unworkable scheme for constitutionalizing the regulation of abortion," has had its debilitating consequences throughout our system. *Thornburgh v. American College of Obstetricians and Gynecologists*, 106 S. Ct. 2169, 2206 (1986) (O'Connor, J., dissenting). It is not only this Court, but other governing units and the culture as well, that "make[] it painfully clear that no legal rule or doctrine is safe from ad hoc nullification . . . when an occasion for its application arises" involving abortion. *Id.*

STATEMENT OF THE CASE

Amici adopt the summary of facts presented in the Brief for Appellees.

SUMMARY OF ARGUMENT

The ordinance of the Town of Brookfield, Wisconsin, which imposes a sweeping ban on peaceful, public issue picketing on public streets and sidewalks, is constitutionally defective.

It is beyond dispute that peaceful picketing on issues of public importance is an activity protected by the First Amendment. *Carey v. Brown*, 447 U.S. 455, 461 (1980). That the residential streets of Brookfield, Wisconsin, are traditional public fora, suitable for expressive First Amendment activity is an axiomatic principal of constitutional jurisprudence. *Hague v. C.I.O.*, 307 U.S. 496 (1939). Certainly a sweeping prohibition of a cherished First Amendment activity, which creates a virtual "First Amendment Free Zone", does not constitute a narrowly drawn regulation of speech serving a compelling state interest.

The ordinance on its face purports to prohibit all picketing. State law, however, specifically allows labor picketing in residential neighborhoods. Under the Equal Protection

Clause, governments may not grant access to a forum to those groups it finds acceptable, but deny access to those exposing more controversial or less favored views. *Police Department of Chicago v. Mosley,* 408 U.S. 92, 95-96 (1972). Therefore, the Brookfield Ordinance is constitutionally defective, in that it violates the Equal Protection Clause, as well as the First Amendment.

The all-encompassing nature of the ordinance, prohibiting all picketing, cannot be justified even in a nonpublic forum. The ordinance is substantially overbroad and is therefore constitutionally impermissible. *Jews for Jesus,* 107 S. Ct. 2568.

This Court cannot legitimately assign superseding importance to the unenumerated right of privacy over the enumerated First Amendment rights of free exercise of religion, free speech, free press, peaceful assembly, and petition.

ARGUMENT

I. THIS COURT LACKS JURISDICTION UNDER 28 U.S.C. §1254(2).

Appellants have sought to invoke the jurisdiction of this Court under 28 U.S.C. §1254(2).[2] In order for jurisdiction to be properly invoked under 28 U.S.C. §1254(2), the court of appeals must squarely have held "that a state statute is unconstitutional on its face or as applied; jurisdiction does not lie if the decision might rest on other grounds." *Burger King*

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[2] Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

. . . .

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented.

. . . .

28 U.S.C. (1254(2).

Corp. v. Rudzewicz, 471 U.S. 462, 470 n.12 (1985) (citations omitted). Further, "it must be reasonably clear that the [court of appeals] independently concluded that the challenged statute governs the case and [that it] held the statute itself unconstitutional as so applied." *Id.*

This Court has ruled on the mechanics by which jurisdiction attaches under 28 U.S.C. §1254(2). *Thornburgh v. American College of Obstetricians and Gynecologists,* 106 S. Ct. 2169 (1986). "We have concluded that it is time that this undecided issue [whether 28 U.S.C. §1254(2) imposes a requirement of finality of judgment] be resolved. We therefore hold . . . that in a situation such as this one, where the judgment is not final, and where the case is remanded for further development of the facts, we have no appellate jurisdiction under §1254(2)." 106 S.Ct. at 2176.

Exercising jurisdiction in this case is not proper. In the present case, after preliminarily enjoying enforcement of the controverted ordinance, the district court offered to permit the preliminary injunction to become permanent without further proceedings. *Schultz,* 619 F. Supp. 792, 798 (E.D. Wis. 1985). The Town of Brookfield, however, rejected that opportunity and sought appellate review of the preliminary injunction.

On appellate review of a preliminary injunction regarding the enforcement of a state statute, the appropriate standard for review of the order of the district court is the "abuse of discretion" standard. *Doran v. Salem Inn,* 422 U.S. 922 (1975). That standard was employed by the Seventh Circuit panel that originally reviewed the issuance of the preliminary injunction in the present case. *Schultz v. Frisby,* 807 F.2d 1339 (7th Cir. 1986). The panel decision, employing the abuse of discretion standard, found no such abuse of discretion. That decision was vacated and a rehearing *en banc* was granted by *Schultz v. Frisby,* 818 F.2d 1284 (7th Cir. 1987).

In a later proceeding, the court of appeals, evenly divided and without issuing an opinion, affirmed the district court decision. The court's action is support for no proposition other than that Appellees are reasonably likely to succeed on the merits of their claim. *Schultz v. Frisby,* 822 F.2d 642 (7th

Cir. 1987), *aff'g* 619 F. Supp. 792 (E.D.Wis. 1985). The court remanded for "any further proceedings deemed necessary." *Jurisdictional Statement* A-1.

Without an opinion from the court of appeals, it cannot be stated that the court of appeals "squarely" held anything with regard to the constitutional repugnancy of the Town of Brookfield General Code §9.17. Certainly, the absence of an opinion may not be cited as making "reasonably clear that the court independently concluded that the challenged statute governs the case and [holding] the statute itself unconstitutional as so applied." *Burger King*, 471 U.S. at 470. In *Thornburgh*, with regard to the attachment of jurisdiction under 28 U.S.C. §1254(2), this Court was presented with a set of facts under which a plausible argument could be made that the requirement of *Burger King* had been met. For, in *Thornburgh*, at least, the Third Circuit had gone beyond mere review for abuse of discretion and had addressed itself to substantive questions of the constitutionality of the Pennsylvania abortion statutes.

Because jurisdiction does not attach under 28 U.S.C. §1254(2), the Court should dismiss the present appeal.

II. THE TOWN OF BROOKFIELD'S ABSOLUTE PROHIBITION OF PICKETING ON RESIDENTIAL SIDEWALKS AND STREETS GOES FAR BEYOND PERMISSIBLE REGULATION OF A PUBLIC FORUM UNDER THE FREE SPEECH CLAUSE OF THE FIRST AND FOURTEENTH AMENDMENTS.

The extent to which government may burden free speech is dependent upon a three-step analysis. *Cornelius v. NAACP Legal Defense and Education Fund, Inc.* 473 U.S. 788, 797 (1985). This analysis begins with a determination of whether the activity in issue is deemed protected speech under the First Amendment. *Id.* When the disputed activity is found to be protected expression, the Court must determine the nature of the forum in issue. *Id.* The extent to which government may regulate protected First Amendment speech depends upon the nature of the forum.

A. PEACEFUL PICKETING ON ISSUES OF PUBLIC IMPORTANCE IS PROTECTED SPEECH.

Appellees desire to engage in peaceful, public issue picketing. Appellees' *Motion to Affirm* 1-2. The underlying issue of public concern is the destruction of unborn children by abortion and specifically the role of Benjamin Victoria, a Brookfield abortionist, in the community. *Brief of Appellants* 5-6. This Court in *Carey v. Brown*, 447 U.S. 455, 460 (1980), recognized that peaceful picketing on public streets and sidewalks in residential neighborhoods is "conduct that falls within the First Amendment's preserve."

Because of its importance to the free exchange of ideas, public issues picketing has always rested on the highest rung of First Amendment values. "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system." *Carey*, 447 U.S. at 467-68 (quoting *Str berg v. California*, 283 U.S. 359 (1931)).

Limiting public access to divergent opinions on religious, political, economic, or social issues leads inevitably to concentrating power into the hands of those groups which can command large or majority followings. The religious dissenter and the political maverick alike will be pushed to conformity and extinction in a sterile America. Clearly, peaceful public issue picketing is a protected First Amendment activity.

B. SIDEWALKS AND STREETS IN RESIDENTIAL NEIGHBORHOODS ARE TRADITIONAL PUBLIC FORUMS.

Certainly, "[s]treets, sidewalks and parks are considered, without more, to be public forums" *United States v. Grace*, 461 U.S. 171, 177 (1983). For purposes of First Amendment analysis, residential streets and sidewalks will not lose their character as traditional public forum property for the rea-

son that they abut "property that has been dedicated to a use other than as a forum for public expression." *Id.* at 180. This is, as this Court stated in *Hague v. C.I.O.*, because "[w]herever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." 307 U.S. at 515. This Court, in *Grace*, determining that the sidewalks surrounding the Supreme Court building were traditional public forums, recognized that:

> The sidewalk comprising the outer boundaries of the Court grounds are indistinguishable from any other sidewalks in Washington, D.C. and we can discern no reason why they should be treated any differently . . . In this respect, this case differs from *Greer v. Spock* . . . [where] the streets and sidewalks at issue were located within enclosed military reservation, Fort Dix, N.J., and were thus separated from the steets and sidewalks of the city itself. That is not true of the sidewalks surrounding the Court. There is no separation, no fence, and no indication whatever to persons stepping from the street to the curb and sidewalks that serve as the perimeter of the Court grounds that they have entered some special type of enclave.

Id. at 179-180. Likewise, the streets where Appellees desire to conduct their peaceful public issue picketing are indistinguishable from any other municipal street or sidewalk in Brookfield. The facts in this case have not established any separation, fence, or other indication suggesting that one has entered some special enclosure. On the spectrum of the public properties, the residential streets of Brookfield, Wisconsin are certainly a far cry from secured military bases, the curtilage of jail houses, *Adderly v. Florida*, 385 U.S. 39, 41 (1966), or foreign embassies, *Boos v. Barry*, 1988 U.S. LEXIS 1445.

C. THE TOWN OF BROOKFIELD'S ABSOLUTE PROHIBITION OF PROTECTED SPEECH IN A TRADITIONAL PUBLIC FORUM IS UNJUSTIFIABLE.

The power of government to limit expressive activity in a tradition public forum is sharply circumscribed. *Perry Education Association v. Perry Local Educators Association*, 460 U.S. 38, 45 (1983). In public forum properties, such as streets, parks and sidewalks, any regulation of speech must be necessary to serve a compelling state interest and narrowly drawn to achieve that end. *Carey*, 447 U.S. at 461.

The sweeping prohibition of peaceful picketing in residential neighborhoods as contained in the ordinance at issue in this case is the most restrictive means imaginable to accomplish any conceivable governmental interest. It achieves its goal only by reducing the overall quality of expression and totally eliminating protected First Amendment speech. In *Police Department of Chicago v. Mosley*, 408 U.S. 92, 101-02 (1971), this Court advised municipalities that the proper approach to control excesses that occasionally accompany picketing was "by narrowly drawn statutes focusing on the abuses...." The Town of Brookfield's ordinance is nothing more than legislative laziness.

The Town of Brookfield's asserted interest in protecting and preserving residential privacy does not create such a compelling interest rising to the level of prohibiting all peaceful picketing. *Carey; Kovacs v. Cooper*, 336 U.S. 77 (1949); *Gregory v. Chicago*, 394 U.S. 11 (1968). There are ordinances in Brookfield's General Code which more narrowly serve the Town's interest in preserving residential privacy by addressing specific wrongs that might occur during picketing. *See Motion to Affirm* Addendum (collecting ordinances of the Town of Brookfield).

A review of ordinances that sweepingly prohibit First Amendment protected activity establishes that such prohibitions do not satisfy the requirement of narrowly tailored regulations. In *Martin v. Struthers*, 319 U.S. 141 (1943), this Court struck down as unconstitutional, an ordinance prohibiting all residential pamphletting. This Court stated that:

> Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved.

Id. at 146-47. This Court made clear in *Struthers* that a more appropriate means of preserving residential privary would have been for the City of Struthers, Ohio, to enforce the posted wishes of individual property owners.

In *Board of Airport Commissioners v. Jews for Jesus,* 107 S. Ct. 2568 (1987), this Court unanimously held that an airport regulation prohibiting all First Amendment activity from taking place in the airport terminal was a "sweeping ban" and could not be justified even in a nonpublic forum because no conceivable governmental interest would justify such an absolute prohibition of speech. *Id.* at 2572.

Most recently, this Court has stated that an ordinance of the District of Columbia, protecting the dignity of foreign diplomats from the display of signs that tend to bring such diplomats or their nations into "public odium" or "public disrepute" was not sufficiently narrowly tailored to withstand exacting scrutiny. *Boos v. Barry,* 1988 U.S. LEXIS 1445. The Court assumed the ordinance was enacted to secure a compelling interest.

In the final analysis, Brookfield's sweeping prohibition of all picketing on residential sidewalks and streets is not a narrowly drawn regulation and therefore is unconstitutional.

III. THE TOWN OF BROOKFIELD'S ABSOLUTE PROHIBITION OF PEACEFUL PICKETING ON RESIDENTIAL SIDEWALKS AND STREETS VIOLATES THE EQUAL PROTECTION CLAUSE.

The Brookfield ordinance purports to prohibit all peaceful public issue picketing on residential sidewalks and streets. The Supreme Court of Wisconsin, however, has construed

Wisconsin statutes as protecting the right to peacefully picket residences as part of labor disputes when the residences are also places of business. *Senn v. Tile Layers Protective Union,* 222 U.S. 383, 268 N.W. 270 (1936).

The Supreme Court of Wisconsin, in *Wisconsin's Environment Decade v. D.N.R.,* 85 Wis. 2d 518, 529, 271 N.W.2d 69, 74 (1978), held that "A city cannot...lawfully forbid what the legislature has expressly licensed, authorized or required...." Thus, in effect, the Brookfield ordinance must allow labor picketing to take place on residential sidewalks and streets. Yet, all other peaceful picketing is prohibited by the ordinance. This selective censorship is nothing more than content discrimination and a clear violation of the Equal Protection Clause.

In *Police Department of Chicago v. Mosley,* 408 U.S. 92 (1972), this Court utilized equal protection analysis to overturn a Chicago City ordinance that discriminated among speakers based on the content of their speech, permitting certain labor related picketing to take place in the vicinity of a school, but prohibiting all other picketing in the same vicinity. *See also Carey v. Brown,* 447 U.S. 455 (1980). In *Mosley,* this Court held:

> Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone.

408 U.S. at 95-96.

Appellants have failed to justify the distinctions between labor picketing and the picketing Appellees desire to conduct. Furthermore, when governmental regulations discriminate among speech-related activities in a public forum, the Equal Protection Clause mandates that the legislation be "finely tailored to serve substantial interests." *Carey,* 447 U.S. at 461-62. As previously established, the ordinance's sweeping prohibition fails to justify any distinctions between permis-

sible and nonpermissible picketing and it has failed to "be finely tailored." The ordinance violates the Equal Protection Clause and is, therefore, unconstitutional. *See also Widmar v. Vincent,* 454 U.S. 268 (1981).

IV. THE TOWN OF BROOKFIELD'S ORDINANCE PROHIBITING PEACEFUL PUBLIC ISSUE PICKETING ON RESIDENTIAL STREETS AND SIDEWALKS IS UNCONSTITUTIONALLY OVERBROAD.

The Town of Brookfield's ordinance prohibiting peaceful public issue picketing on residential streets and sidewalks is unconstitutionally overbroad.

Even if the residential streets and sidewalks were deemed nonpublic forums, the ordinance on its face still contravenes the First Amendment. The prohibition of all peaceful picketing is substantially overbroad and cannot be tolerated by our system of freedom of expression. *Board of Airport Commissioners of Los Angeles v. Jews for Jesus,* 107 S. Ct. 2568 (1987); *New York v. Ferber,* 458 U.S. 747, 769 (1982).

An enactment is " 'overbroad' if in its reach it prohibits constitutionally protected conduct." *Grayned v. Rockford,* 408 U.S. 104, 114 (1972). The rationale of the overbreadth doctrine is that "because First Amendment freedoms need 'breathing space' to survive, government may regulate in this area only with narrow specificity." *NAACP v. Button,* 371 U.S. 415, 433 (1963); *accord, Broadrick v. Oklahoma,* 413 U.S. 601, 611 (1973). Therefore, restrictions on the exercise of First Amendment rights "must be narrowly tailored to further the [s]tate's legitimate interest." *Grayned,* 408 U.S. at 116-17; *accord, Chase v. Develaar,* 645 F.2d 735 n.10 (9th Cir. 1981). "Broad prophylactic rules in the area of free expression are suspect . . . . Precision of regulation must be the touchstone." *Button,* 371 U.S. at 438 (citations omitted); *accord, Schaumburg v. Citizens for a Better Environment,* 444 U.S. 620, 637 (1980).

The overbreadth doctrine is necessary to safeguard the First Amendment's "breathing space" for two reasons. First, an ordinance that:

> does not aim specifically at evils within the allowable area of [s]tate control but on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press readily lends itself to harsh and discriminatory enforcement by [public] officials against particular groups deemed to merit their displeasure . . . [and thus] results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview.

Thornhill v. Alabama, 310 U.S. 88, 97-98 (1940). Even more vital to free expression, though, is the need that overbroad laws be judicially nullified in order that they may not have a "chilling effect on free expression." *Dombrowski v. Pfister,* 380 U.S. 479, 487 (1965).

"[T]he peculiarly vulnerable character of activities protected by the first amendment," Tribe, *American Constitutional Law* §12-24, at 711 (1978) and their "supremely precious" nature, *Button,* 371 U.S. at 433, require that they be regulated with "sensitive tools." *Burton v. Municipal Court,* 68 Cal. 2d 684, 692, 441 P.2d 281, 286, 68 Cal. Rptr 721, 726 (1968). A "demonstrably overbroad [regulation] may deter the legitimate exercise of first amendment rights," *Erznoznik v. Jacksonville,* 422 U.S. 205, 216 (1975), for the threat of sanctions may be almost as potent a deterrent "as the actual application of sanctions," *Button,* 371 U.S. at 433. The "very existence" of overbroad regulations may cause those who do not wish or dare to become engaged in litigation "to refrain from constitutionally protected speech or expression." *Broadrick,* 413 U.S. at 612.

This deterrent or "chilling" effect is minimized by the overbreadth doctrine, which mandates that an overbroad regulation be declared "invalid on its face" and unenforceable against anyone. *Chase,* 645 F.2d at 737.

The facial overbreadth doctrine is applicable where governmental regulations "by their terms purport to regulate the

time, place, and manner of expressive or communicative conduct." *Broadrick,* 413 U.S. at 613. Hence, "[T]he crucial question" is whether the ordinance in this case "sweeps within its prohibition what may not be punished" under the First Amendment. *Grayned,* 408 U.S. at 114-15.

In this case, the overbreadth arises from the blanket nature of the ordinance's prohibition. All peaceful picketing is purportedly prohibited, even labor picketing protected by state law. Rather than narrowly tailoring precise regulations, as the First Amendment commands, the ordinance instead, in classic fashion, "sweep[s] unnecessarily broadly and thereby invade[s] the area of protected freedoms," *NAACP v. Alabama ex. rel. Flowers,* 377 U.S. 288, 307 (1964).

As this Court unanimously held in *Jews for Jesus,* "We think it obvious that such a ban cannot be justified even if LAX were a nonpublic forum because no conceivable governmental interest would justify such an absolute prohibition of speech."

CONCLUSION

Free speech is essential to the maintenance of a just and free society. Peaceful public issue picketing is a form of protected expression and should not be subjected to restriction in the traditional public forum, other than reasonable time, place, and manner regulation. When expression, including picketing, is proscribed, the regulation must be narrowly tailored to serve compelling governmental interests. If such regulation or proscription fails to be narrowly tailored or is not supported by compelling interests, it cannot stand.

Because of their cherished role in society, fundamental freedoms are accorded a special measure of protection under the Equal Protection Clause. A regulation of speech that discriminates on the basis of content violates principles of equal protection. Anything less than the closest fit of "means to ends" violates equal protection. Any discriminatory treatment of a fundamental right cannot stand if it is not supported by compelling governmental interests.

The ordinance's sweeping prohibition is unconstitutional.

The unenumerated right to privacy should not be permitted by this Court to become a vehicle for the destruction of cherished First Amendment freedoms.

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